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**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Item 10**

**Agenda ID 13853**

**ENERGY DIVISION  
4702(Rev.2)**

**RESOLUTION E-**

**May 7, 2015**

**R E D A C T E D  
R E S O L U T I O N**

Resolution E-4702. PG&E requests approval of an Extension Agreement of the amendment to an existing power purchase agreement with Burney Forest Products.

**PROPOSED OUTCOME:**

- Approve without modification the Extension Agreement of the amendment to the power purchase agreement between Pacific Gas and Electric Company and Burney Forest Products.

**SAFETY CONSIDERATIONS:**

- The Commission is not aware of any safety issues associated with the approval of this contract extension.

**ESTIMATED COST:**

- Actual costs are confidential at this time.

By Advice Letter 4513-E Filed on October 9, 2014.

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**SUMMARY**

This Resolution approves, without modification, Pacific Gas and Electric Company's (PG&E's) Extension Agreement with Burney Forest Products to extend an amendment to a Qualifying Facility Interim Standard Offer No. 4 Power Purchase Agreement with Burney Forest Products (Burney).

PG&E and Burney's agreement is for PG&E to exercise its option to extend the Amendment for one year, from October 1, 2014 to September 30, 2015.

Burney is a 29 MW biomass Qualifying Facility located in Burney, California. Under the contract extension it will continue to provide PG&E with Renewables Portfolio Standard (RPS)-eligible energy.

This Resolution finds that the costs of the one year Extension Agreement are reasonable.

## **BACKGROUND**

Burney is a 29 MW biomass Qualifying Facility located in Burney, California. For its fuel, it has historically burned biomass resulting primarily from waste wood products.

PG&E and Burney executed an initial power purchase agreement (PPA) on April 9, 1985 for firm capacity deliveries beginning January 3, 1990. The original PPA is a 30-year Interim Standard Offer 4 PPA that expires January 2, 2020. Burney has delivered electricity generated by the facility under the PPA since the facility began operations in October 1989 and started providing firm capacity in January 1990.

A 2006 settlement between PG&E and the Independent Energy Producers Association resulted in a PPA amendment in which PG&E paid a fixed price to Burney. The settlement's fixed price period expired in August 2011, and the price for energy reverted to the variable short-run avoided cost.

In 2010, Burney indicated to PG&E that the terms and conditions of the PPA were uneconomic for Burney to continue to operate the facility at historic levels. On October 14, 2011, PG&E and Burney executed an Amendment to the PPA. On December 19, 2011, PG&E filed Advice Letter 3974-E for approval of the Amendment. On May 24, 2012, the Commission approved the Amendment in Resolution E-4491.

The Amendment modified the existing contract price in exchange for stricter performance obligations. This price adjustment allowed Burney to recover costs for energy deliveries for the period beginning October 1, 2011 until the Amendment expiration date. The Amendment has an initial term of three years, after which PG&E has the option to extend the Amendment terms for an additional year and an additional option to extend it for another eleven months. Commission Resolution

E-4491 noted that “it may be appropriate to extend the Amendment terms...depending on PG&E’s compliance position at that time, and the state of the renewable energy market... [W]e believe the option to extend the Proposed Amendment term is reasonable as it preserves the ability to retain this generation if it is needed.”<sup>1</sup>

In January 2014, PG&E and Burney began discussing the first extension to the Amendment. Based on these discussions, the two parties signed an Extension Agreement on September 15, 2014. The Extension Agreement does not modify any of the terms of the Amendment contract.

**Table 1: Summary of PG&E's Agreements with Burney**

<b>Agreement</b>	<b>Dates</b>	<b>Status</b>
30-year Interim SO 4 contract	1/3/90-1/2/20	Approved
Amendment	10/1/11-9/30/14	Approved
Amendment Extension 1	10/1/14-9/30/15	Pending Approval
Amendment Extension 2	10/1/15-8/31/16	The option for a second extension exists, but PG&E and Burney have not yet exercised this option.

## **NOTICE**

Notice of Advice Letter 4513-E was made by publication in the Commission’s Daily Calendar. Pacific Gas and Electric Company states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

## **PROTESTS**

The Office of Ratepayer Advocates (ORA) filed a timely protest to the Advice Letter on October 29, 2014, and PG&E filed a reply to the protest on November 5, 2014. The Independent Energy Producers Association late-filed a response to the Advice Letter on November 12, 2014.

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<sup>1</sup> Resolution E-4491 at 10.

ORA's protest raises three issues: (1) PG&E has not demonstrated a need for this amended contract, (2) the Commission should not approve this extension until it determines how the investor-owned utilities will procure energy under SB 1122, and (3) PG&E has not demonstrated that this contract amendment provides additional economic value to ratepayers over the original contract.

ORA's first point is that PG&E does not need this contract to meet its Renewables Portfolio Standard (RPS) compliance obligation. When the Commission approved the original three-year term of the amendment, PG&E was short in meeting its RPS target, and it was reasonable for the Commission to approve the price increase for the first three years. As PG&E no longer needs this contract to meet its obligation, it does not justify paying the amended pricing.

ORA also suggests that the Commission deny the Extension Agreement because the Commission is currently considering how to implement the bioenergy requirements under SB 1122.<sup>2</sup>

Further, ORA states that the Extension Agreement provides no additional economic value to ratepayers over the original contract. Neither the non-economic benefits to ratepayers nor compliance with Executive Order S-06-06 outweighs the additional cost of the Extension Agreement.

PG&E, in its response, addresses each of ORA's points of protest to the advice letter. First, PG&E reiterates that it is not seeking approval of the Extension Agreement based on its need for RPS-eligible energy. Instead, PG&E believes the contract contributes to diversity in its portfolio of RPS-eligible resources and the amendment provides operational benefits to PG&E. As a small biomass facility, Burney provides diversity in fuel source, delivery profile, technology, operating characteristics, contract tenor, and geography.

PG&E also states that the Commission should not wait for a decision in its bioenergy proceeding, because the Burney facility owner would substantially reduce operations without the Extension Agreement. PG&E notes that the

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<sup>2</sup> As discussed further in the "Discussion" section of this Resolution, the Commission later adopted a program to implement SB 1122, and Burney is not eligible for this program.

proposed starting price of the auction mechanism under SB 1122 is \$124.66/MWh,<sup>3</sup> which is more than the amendment price for Burney.

Third, PG&E mentions that the Extension Agreement provides non-economic operational benefits. There is also value in retaining an existing RPS-eligible resource that has operated in compliance with the amendment.

The Independent Energy Producers Association (IEP) response to the advice letter supports approval of the Extension Agreement. First, Assembly Bill (AB) 327 gives the Commission authority to require utilities to meet an RPS goal of greater than 33 percent, and clarifies that the RPS is a floor rather than a ceiling. Keeping this resource in its portfolio allows PG&E to properly hedge its portfolio in anticipation of higher amounts of renewable energy in the future.

Additionally, IEP states that the Commission cannot delay decision-making on this Extension Agreement while it decides how to implement SB 1122. IEP suggests that SB 1122 should be implemented as an expansion to the existing biomass/bioenergy program, so it should not preclude approval of this agreement. Approving a contract extension will provide more flexibility to address future program needs.

Finally, IEP argues that Burney provides significant value to the local community. The facility is important in stimulating the economy in this remote, rural area of California.

## **DISCUSSION**

On October 9, 2014, PG&E filed Advice Letter 4513-E, which requests a Commission resolution with an effective date of October 1, 2014 that approves the Extension Agreement without modification and thereby approves PG&E's election to exercise its initial one-year option to extend the Amendment as reasonable and prudent.

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<sup>3</sup> See Appendix B: Staff Proposal.

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M081/K583/81583311.PDF/>.

**Energy Division evaluated the proposed Extension Agreement based on the following criteria:**

- Consistency with PG&E's 2013 RPS Procurement Plan and RPS Portfolio Need, and State Policies on Biomass Procurement
- Consistency with D.04-12-048 and D.06-12-009, Allowing Contracts to be Authorized through the Advice Letter Process
- Consistency with D.10-12-035, adopting the QF/CHP Program Settlement
- Applicability of R.11-05-005 Implementing SB 1122, the Bioenergy Feed-in Tariff
- Consistency with Renewables Portfolio Standard (RPS) Standard Terms and Conditions
- RPS Eligibility and CPUC Approval
- Safety Considerations
- Consistency with D.02-08-071, which requires Procurement Review Group Participation
- Cost Reasonableness
- Project Viability

**Consistency with PG&E's 2013 RPS Procurement Plan and RPS Portfolio Need, and State Policies on Biomass Procurement**

California's RPS statute requires the Commission to direct each utility to prepare an annual RPS Plan and then review and accept, modify, or reject the Plan prior to the commencement of a utility's annual RPS RFO.<sup>4</sup>

Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>5</sup>

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<sup>4</sup> Pub. Util. Code, §399.14.

<sup>5</sup> Pub. Util. Code, §399.14(a)(3).

PG&E's 2013 RPS Plan states that it is "well-positioned to meet the 33 percent RPS mandate and projects that it will comply with its 2011-2013 Compliance Period RPS requirement of an average of 20 percent deliveries over that period. PG&E also projects that it will meet its second (2014-2016) and third (2017-2020) Compliance Period RPS requirements."<sup>6</sup> The plan further states that PG&E will "focus on cost-effective procurement intended primarily to position PG&E to be able to satisfy an ongoing 33% RPS requirement."<sup>7</sup>

PG&E's 2013 RPS Plan also discusses risks to its RPS portfolio. To monitor risk, one of the things PG&E reviews is "the diversity of its incremental resource portfolio in order to determine if PG&E is relying too heavily on projects of a single technology..."<sup>8</sup>

Burney is generally expected to deliver approximately 216 GWh of RPS-eligible power to PG&E each year during the term of the Amendment.<sup>9</sup> The facility is already delivering renewable energy under its existing contract.

Burney is an RPS-eligible resource; however, as PG&E is already well-positioned to meet its RPS mandate, it is not seeking approval of the Extension Agreement primarily based on its need for RPS-eligible energy. Rather, PG&E argues that the contract contributes to diversity in PG&E's portfolio of RPS-eligible resources. In contrast to the wind and solar projects that account for the majority of PG&E's RPS-eligible resources, PG&E states that Burney provides diversity in fuel source and technology as a biomass Qualifying Facility. Located in the Northern California Sierra Mountains, Burney also provides geographic diversity.

The Extension Agreement, which provides diversity in PG&E's RPS-eligible portfolio, is consistent with the need for diversity that PG&E identified in its 2013 RPS Plan.

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<sup>6</sup> Public Version of PG&E's 2013 RPS Plan at 1.

<sup>7</sup> Ibid.

<sup>8</sup> Public Version of PG&E's 2013 RPS Plan at 72.

<sup>9</sup> PG&E Advice Letter 3974-E at 2.

ORA's protest argues that PG&E has not demonstrated a need for the Extension Agreement to meet its RPS compliance obligation.<sup>10</sup> IEP, in its response to PG&E's advice letter, states that the passage of AB 327 gives the Commission authority to require investor-owned utilities to meet an RPS goal of more than 33 percent.<sup>11</sup> AB 327 sets a minimum, or floor, on the quantity of electricity products from eligible renewable energy resources.<sup>12</sup>

That Commission agrees with PG&E that while PG&E does not need the Burney Extension Agreement to meet its minimum RPS compliance obligation, procuring an RPS-eligible resource is consistent with the intent of AB 327. PG&E will meet at least its minimum RPS goal with the approval of this contract extension.

As in Resolution 4491-E, we also note that approval of the Extension Agreement supports California Executive Order S-06-06, establishing targets for the use and production of biofuels and biopower and directing state agencies to work together to advance biomass programs in California while providing environmental protection and mitigation.<sup>13</sup>

Procurement of energy and capacity from Burney is consistent with PG&E's 2013 RPS Procurement Plan and RPS Procurement Need, as well as state policy to advance the use of biofuels in California.

### **Consistency with D.04-12-048 and D.06-12-009, Allowing Contracts to be Authorized through the Advice Letter Process**

D.04-12-048<sup>14</sup> and D.06-12-009<sup>15</sup> provide that contracts less than five years may be authorized through the advice letter process, rather than through an application.

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<sup>10</sup> ORA Protest at 2.

<sup>11</sup> IEP Response at 2.

<sup>12</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB327](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB327)

<sup>13</sup> Executive Order S-06-06 by the Governor of the State of California (April 2006).  
<http://www.dot.ca.gov/hq/energy/Exec%20Order%20S-06-06.pdf>.

<sup>14</sup> Ordering Paragraph 14.

<sup>15</sup> At page 7.



The Amendment, inclusive of the two options to extend, would at most modify the existing SO4 PPA for 4 years and 11 months. Consistent with Commission Resolution E-4491, filing the Extension Agreement for approval via Advice Letter is consistent with D.04-12-048 and D.06-12-009.

### **Consistency with D.10-12-035, adopting the QF/CHP Program Settlement**

On December 16, 2010, the Commission adopted the QF/Combined Heat and Power (CHP) Settlement with the issuance of D.10-12-035. The Settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and qualifying facility contracts.

The Settlement establishes megawatt (MW) procurement targets and greenhouse gas (GHG) Emissions Reduction Targets the investor-owned utilities must meet for Existing CHP Facilities. The Settlement Term Sheet states that coal-fired, wood waste, and renewable QFs in a utility's portfolio as of July 2010 will not count towards the MW<sup>16</sup> or GHG<sup>17</sup> goals.

PG&E has not requested that Burney count towards its MW or GHG goals under the Settlement. Although Burney is a Qualifying Facility, it is not eligible to count towards the Settlement MW or GHG targets.

PG&E's treatment of the Extension Agreement is consistent with the QF/CHP Settlement Term Sheet. The Burney Extension Agreement will not count towards PG&E's MW or GHG targets.

### **Applicability of R.11-05-005 Implementing SB 1122, the Bioenergy Feed-in Tariff**

The Commission addressed implementation of Senate Bill (SB) 1122 in Rulemaking (R.) 11-05-005. Signed into law in 2012, SB 1122 requires an incremental 250 MW of renewable Feed-in Tariff procurement from small-scale

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<sup>16</sup> Settlement Term Sheet Section 5.2.4.2.

<sup>17</sup> Settlement Term Sheet Section 6.4.3.

(up to 3 MW) bioenergy projects that commence operation on or after June 1, 2013.

Because Burney is greater than 3 MW and began operation before June 1, 2013, it is not eligible for the SB 1122 Bioenergy Feed-in Tariff. Therefore, the Feed-in Tariff is not relevant to the approval of the Extension Agreement.

ORA's October 29, 2014 protest to this advice letter states that the Commission should deny the Extension Agreement because there is uncertainty in how the Commission will direct the investor-owned utilities to procure bioenergy under SB 1122.<sup>18</sup> On December 18, 2014, the Commission issued D.14-12-081 in R.11-05-005 to adopt the Bioenergy Feed-in Tariff program. Final implementation details of the program will be finalized in a new proceeding, R.15-02-020.

Because the Commission has adopted the Bioenergy Feed-in Tariff program, and Burney is not eligible for this program, the pending implementation of SB 1122 is not justification to deny the Extension Agreement.

### **Consistency with Renewables Portfolio Standard (RPS) Standard Terms and Conditions**

The Commission adopted a set of standard terms and conditions required in RPS contracts, five of which are considered "non-modifiable." The standard terms and conditions were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently, the Commission further refined some of the standard terms and conditions in D.10-03-021, as modified by D.11-01-025, and D.13-11-024.

As determined in Commission Resolution E-4491, the Burney Amendment includes the Commission's adopted RPS "non-modifiable" standard terms and conditions.

Because the terms of the Amendment will not change during the one-year extension, the Extension Agreement is consistent with RPS standard terms and conditions.

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<sup>18</sup> ORA Protest at 3.

## **RPS Eligibility and CPUC Approval**

Pursuant to Public Utilities Code Section 399.13, the California Energy Commission (CEC) certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable “eligibility” language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>19</sup>

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.”<sup>20</sup>

Notwithstanding this language, given that the Commission has no jurisdiction to determine whether a project is an “Eligible Renewable Energy Resource” for RPS purposes, this finding and the effectiveness of the non-modifiable “eligibility” language is contingent on CEC’s certification of Burney as an “Eligible Renewable Energy Resource.” The contract language that Burney is “procurement from an eligible renewable energy resource” must be a true statement at the time of the first delivery of energy, not at the signing of the PPA or at the issuance of this Resolution.

While we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a

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<sup>19</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

<sup>20</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

non-RPS-eligible resource to count towards an RPS compliance obligation absent CEC certification. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of such contracts.

### **Safety Considerations**

During the one-year Extension Agreement, it is expected that Burney will not change its operations. The Commission is not aware of any safety issues associated with this facility.

### **Consistency with D.02-08-071, which Requires Procurement Review Group Participation**

On September 9, 2014, PG&E discussed the Extension Agreement with the Procurement Review Group. PG&E has complied with its obligation to notify its Procurement Review Group.

### **Cost Reasonableness**

PG&E states that when negotiating the Extension with Burney, PG&E did not receive any additional value to its customers over the existing Amendment.<sup>21</sup> ORA's protest suggests that the costs of the Extension Agreement are not justified.<sup>22</sup> The Commission previously determined in E-4491, that the costs of the Burney Amendment are reasonable. Confidential Appendix A provides further support that the costs of the Extension Agreement are reasonable and provide economic value to ratepayers.

The Commission does not agree with ORA's argument that the Burney Extension Agreement does not provide additional economic value to ratepayers over the original contract.

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<sup>21</sup> Advice Letter 4513-E at 3.

<sup>22</sup> ORA Protest at 3-4.

## **Project Viability**

Burney is an existing Qualifying Facility that has been under contract with PG&E since 1990. A representative of Burney has declared that if the Amendment is not extended, Burney would substantially reduce operations.<sup>23</sup> Approving the Extension Agreement would allow this project to remain viable.

With the Extension Agreement, Burney is a viable project.

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on March 27, 2015. No comments were filed.

## **FINDINGS**

1. Procurement of energy and capacity from Burney, a Renewables Portfolio Standard (RPS)-eligible biomass facility, is consistent with PG&E's 2013 RPS Procurement Plan, RPS Portfolio Need, and state policies on biomass procurement.
2. Filing the Extension Agreement for approval via Advice Letter is consistent with D.04-12-048 and D.06-12-009.
3. PG&E's treatment of the Extension Agreement is consistent with the QF/CHP Settlement Term Sheet.
4. The Burney Extension Agreement will not count towards PG&E's megawatt or greenhouse gas emissions reduction targets under the QF/CHP Settlement.

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<sup>23</sup> See Confidential Appendix C: Declaration of Noshir Irani (Burney Forest Products).

5. Because the Commission has adopted the Bioenergy Feed-in Tariff program, and Burney is not eligible for this program, the pending implementation of Senate Bill 1122 is not justification to deny the Extension Agreement.
6. The Extension Agreement is consistent with RPS standard terms and conditions.
7. Any procurement pursuant to this Extension Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Sections 399.11, et seq.), D.11-12-020 and D.11-12-052, or other applicable law. This finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation absent California Energy Commission (CEC) certification. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract.
8. PG&E has complied with the Commission's rules for involving the Procurement Review Group.
9. The costs of the Extension Agreement are reasonable and provide economic value to ratepayers.
10. Burney Forest Products is an existing Qualifying Facility and therefore a viable project.

**THEREFORE IT IS ORDERED THAT:**

1. The request of Pacific Gas and Electric Company in Advice Letter AL 4513-E for the Commission to approve without modification the Extension Agreement with Burney Forest Products is approved.
2. The effective date of the Extension Agreement is October 1, 2014.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 7, 2015; the following Commissioners voting favorably thereon:

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TIMOTHY J. SULLIVAN  
Executive Director

Confidential Appendix A

**[REDACTED]**